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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.1.2007

Coram:

The Honourable Mr.Justice J.A.K.SAMPATH KUMAR

A.S.No.93 of 2002

1.Hajira Beevi
2.H.Mohammed Mustafa
3.Nilofer Nisha Begum .. Appellants/Plaintiffs 2 to 4

-Vs-

1.R.Saraswathi
2.S.Chandrakumar
3.Suganyakumar
4.D.Vijayalakshmi .. Respondents/Deft 1 and Proposed parties

The Appeal is filed Under Section 96 of the Civil Procedure Code against the Judgment and decree dated 13.11.2001 made in I.A.No.209 of 2001 in O.S.No.1456 of 1991, on the file of the II Additional Subordinate Judge, Coimbatore.

For Appellants : Mr.T.L. Thirumalaiswami for M/s.Sarvabhouman Associates

For Respondents
R1 : Died
for R2 and R3 : Mr.G.Elangovan
for R4 : No appearance

....

JUDGMENT

This appeal is filed against the Judgment dated 13.11.2001 in I.A.No.209 of 2001 in O.S.No.1456 of 1991, on the file of the II Additional Subordinate Judge's Court, Coimbatore in and by which the learned Sub Judge after analysing the evidence found that the petitioners/plaintiffs are not entitled for the petition claim and accordingly dismissed the the final decree. Hence, the present appeal.

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2. The present appeal is filed by the plaintiffs against such finding. For convenience, the parties are referred as arrayed in the original suit.

3. The petitioners/plaintiffs states as follows:-

3.1. The petitioner/plaintiff in the original suit obtained a preliminary mortgage decree against the first respondent for a sum of Rs.13,81,065.30 with subsequent interest of Rs.3,60,000/- from the date of the suit till the date of realisation with costs of Rs.71,311.75 on or before 24.8.1998. The first respondent failed to pay the decree amount.

3.2. Respondents 2 to 4 claim that the first respondent sold portions of properties to them after the mortgage in favour of the original mortgagees. Therefore, they are liable to be proceeded against under section 146 Civil Procedure Code. Therefore, the respondents 2 to 4 are impleaded at the final decree stage by virtue of Section 146 C.P.C. Hence the petition.

3.3 Respondents state as follows:- The petitioners are not entitled to proceed against the respondents by virtue of Section 146 Civil Procedure Code. The said provision can be invoked only when there is transfer of interest in the suit property pending proceedings. Respondents purchased the property for valuable consideration even prior to the filing of the suit. Hence, the petition is liable to be dismissed.

4. No oral evidence let in on both sides. Exhibits B1 to B7 were marked on the side of the respondents to confront the claim of the petitioners/plaintiffs. Though lower court after hearing rival claims found that petitioners cannot file any petition seeking final decree against respondents 2 to 4 and accordingly dismissed the petition against them while passing a final decree against the first respondent. The present appeal is filed by the petitioners/plaintiffs against the dismissal of the petition against respondents 2 to 4.

5. When the matter is taken up for disposal, a compromise memo is filed between the appellants/plaintiffs and the respondents 2 and 3 viz., S.Chandrakumar and Suganyakumar seeking for appropriate order in the appeal. The said compromise memo is hereby recorded. In such view of the fact, the appeal is allowed in part in terms of the compromise memo against respondents 2 and 3 viz., S.Chandrakumar and Suganyakumar. As far as the fourth respondent is concerned, none appeared to make submission. So, the only point for consideration is whether the finding of the lower court in

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dismissing the petition against the fourth respondent alone is in order.

Point:- It is not the case of the petitioners/appellants/plaintiffs that the fourth respondent purchased a portion of the suit property pending litigation. Section 146 of Civil Procedure Code can be invoked only in a case where any interest in the property transfers pending litigation.

6. It is a well settled position of law that Section 146 of Civil Procedure Code can be invoked only in a case where the interest of the property transferred during the pendency of the litigation. The ratio laid down by ***1941 1 MLJ 626*** and ***AIR 1964 Patna 321*** is applicable to the facts in hand. The courts below taken note of the propositions laid down in the said ruling and also in the light of the conditions laid down in Section 146 Civil Procedure Code found that the final decree proceedings against the fourth respondent is not maintainable and accordingly dismissed. I do not find any illegality or irregularity in the finding of the lower Court in dismissing the final decree passed against the fourth respondent. The finding of the lower Court does not require any interference in this regard.

7. In the result, the appeal is allowed in part in terms of the compromise memo recorded against the second and third respondent. The appeal is dismissed with regard to other aspects.

(Here enter the Xerox Copy of Compromise Memo)

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The II Additional Subordinate Judge, Coimbatore.

2. The Section Officer, VR Section,
High Court, Madras.

+ 1 cc to Sarvabhauman Associates in SR No. 3289

KSJ(CO)
SR/8.2.2007

Judgment
in A.S.No.93 of 2002

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